

CONFIDENTIAL
WEEKLY HOT TOPICS REPORT for RA/DRA Region 8
Week ending November 30, 2018

OFFICE OF ECOSYSTEMS PROTECTION AND REMEDIATION

HOT ISSUES AND IMPORTANT DEADLINES:

EPA Radiation Source Program Deployment in Support of an 8th WMD Civil Support Team and Longmont Fire HAZMAT Exercise, Longmont, CO

ATTENDEES - EPA, U.S. Army North (ARNORTH) Training Team, 8th (CO) WMD Civil Support Team, and Longmont Fire/HAZMAT

LOCATION - 9595 Nelson Rd, Longmont CO 80501

DATE - 12/4/18 8am-4pm

Key Message: EPA is providing radiological sources to support an external evaluation of the 8th WMD Civil Support Team's radiological response capabilities in Longmont next week. EPA has been supporting training events like these with radiological sources within Region 8 for the past few months, but this is the first local deployment since August, should any SLT members choose to come and observe.

- Region 8 has one of eight Authorized Users on the radiological materials license issued to Consequence Management Advisory Division (CMAD) by the Nuclear Regulatory Commission (NRC).
- These Authorized Users serve as regional liaisons for the EPA's national Radiation Source Program.
- CMAD has numerous high-activity gamma and neutron sources for calibrating EPA ASPECT aerial radiation detection systems.
- The Radiation Source Program makes these sources available, by way of Authorized Users, to first responders and other local, state, and federal agencies to use in dozens of real-world radiation training events nationwide every year.
- At these training events, Authorized Users ensure source security, actively monitor electronic personnel dosimetry equipment, train dozens of participants on the proper use of radiation detection instrumentation, and the practical methods of keeping doses as low as reasonably achievable by minimizing time and maximizing distance and shielding.
- Region 8 has supported five of these Radiation Source Program deployments since August, when the first one occurred with the 8th WMD Civil Support Team, Aurora Fire, and Denver Fire.
- The four others occurred in Montana and South Dakota, always involving the Civil Support Teams from those states, local responders, and ARNORTH as the exercise coordinators and controllers.
- The regional travel costs and source shipping costs are covered by the Radiation Source Program via an interagency agreement with ARNORTH.
- These real-world trainings and exercises are invaluable for building capacity, strengthening response partnerships, and enhancing readiness for radiological incidents.
- Contacts: Dan Wall 312-6560, Steve Merritt 312-6146

Abandoned chemical site in Ogden, UT

Key Message: A brownfields investigation of an abandoned chemical storage site in Ogden, Utah revealed a possible explosion hazard. The Removal program is immediately following up with a removal assessment.

- In early 2018, the City of Ogden engaged the EPA brownfields program in discussions regarding assistance with assessing and cleaning up a chemical storage facility they purchased in 2017. Because they had not completed All Appropriate Inquiry prior to purchase, the determination was made that they were ineligible for brownfield funding.
- With the passage of the BUILD Act in March of 2018, and the associated changes to CERCLA liability, the City again inquired about brownfields eligibility. Working in conjunction with EPA's enforcement attorneys, the brownfields program deemed the City was no longer potentially liable for the contamination and therefore eligible for brownfields funding.
- An investigation, contracted by the City prior to purchase, estimated approximately 300 drums were on the property. Based on this information, EPA Targeted Brownfields Assessment (TBA) assistance was requested to classify the various hazardous chemicals. This TBA work was to be performed in conjunction with a removal contractor the City planned to hire.
- Based on the site conditions encountered by EPA contractor, the TBA scope of work was amended to include an initial inventory of the chemicals on site before any additional assessment work would be performed.
- The draft TBA inventory report, completed on 11/19/18, indicated that over 40,000 chemical containers are present on the property, in varying stages of containment.
- This inventory report was immediately shared with UDEQ, as well as EPA's Site Assessment and Emergency Response/Removal Programs. Following a review, a call was scheduled for 11/21/18 with the City and all other interested parties.
- Immediately following the 11/21 call, the City shared the draft report with the fire department and had them visit the property that same day.
- With support and cooperation from the City, EPA's Removal Program will be visiting the site during the week of 12/2/18 for a Removal Assessment. UDEQ has been made aware of the site visit and may also be in attendance.
- Additional information will be available following the Removal Assessment.
- Contacts: Christina Wilson, EPR-AR, 312-6706; Joyce Ackerman, EPR-ER, 312-6822

OFFICE OF ENFORCEMENT, COMPLIANCE & ENVIRONMENTAL JUSTICE

HOT ISSUES AND IMPORTANT DEADLINES:

OPA Enforcement plans to send an information request to Keller Transport Inc for a discharge in Dawson County, Montana

Key Message: OPA Enforcement is sending an information request to Keller Transport, Inc. for the reported discharge of red diesel from a vehicle in Dawson County, Montana.

- On April 25, 2018, a discharge of red diesel from a vehicle accident was reported to the National Response Center (NRC). The NRC report indicated the amount was 200 gallons discharged into a barrow ditch along the highway.
- The location of the spill is in proximity to Upper Sevenmile Creek. Upper Sevenmile Creek flows to the Yellowstone River.
- OPA Enforcement is issuing this information request to gather information to determine the extent of the discharge (including actual quantities discharged and the possible impact of the waters of

the U.S. and/or its tributaries), the environmental harm resulting from the discharge, and the status of the spill clean-up.

- The EPA directly implements the OPA program.
- Contact: Darla Hohman, 312-6263; Management Contact: Stephanie DeJong, 312-6362

OPA Enforcement plans to send information request to Washakie Renewable Energy to evaluate compliance at the Plymouth, Utah facility

Key Message: OPA Enforcement is sending an information request to Washakie Renewable Energy to evaluate the facility's compliance with the Spill Prevention, Control, and Countermeasure (SPCC) and Facility Response Plan (FRP) regulations, including implementation of the facility's SPCC and FRP plans.

- OPA Enforcement received a complaint alleging crude oil is being routinely spilled at the Plymouth Utah Facility that is not being properly remediated.
- A Request for Information is being sent at this time rather than conducting an inspection due to site safety concerns.
- The facility stores over 1 million gallons of oil.
- The Malad River is approximately 0.8 miles from the central tank battery of the facility. The Malad River, a perennial river, that flows the Bear River, which then flows the Great Salt Lake.
- The EPA directly implements the OPA program.
- Contact: Dennis Jaramillo, 312-6203; Management Contact: Stephanie DeJong, 312-6362

OPA Enforcement plans to send supplemental information request to Belle Fourche Pipeline Company (Belle Fourche) for an oil spill near Belfield, North Dakota

Key Message: OPA Enforcement is sending a supplemental information request to Belle Fourche to gather additional information on a December 5, 2017 oil spill.

- On December 5, 2016, after being notified of an ongoing discharge by a local rancher, a response team from Belle Fourche reported evidence of a crude oil discharge from the company's 6-inch Bicentennial crude oil transportation pipeline into Ash Coulee Creek in western North Dakota. The discharged oil is Bakken crude.
- The discharge occurred in a rugged badland area on a private property approximately 20 miles northwest of Belfield, North Dakota.
- The discharge has impacted private property, Ash Coulee Creek (which is a relatively permanent water and a tributary of the Little Missouri River, a Traditional Navigable Water), and the Little Missouri National Grassland managed by the U.S. Forest Service. A sheen was also observed on the Little Missouri River for some distance after its confluence with Ash Coulee Creek.
- OPA Enforcement had been developing an enforcement case for the spill and discussing the matter with Belle Fourche. New technical information which emerged through case development requires a formal information request and response. Attempts to acquire this information informally has been unsuccessful.
- Technical Contact: Christopher Ajayi, 312-6320; Management Contact: Stephanie DeJong, 312-6362, Legal Contact: Sheldon Muller, 312-6916

NPDES Enforcement Sending a Warning Letter to the City of Polson, Montana for Failing to Submit a Permit Application

Key Message: National Pollutant Discharge Elimination System (NPDES) Enforcement plans to send a warning letter to the City of Polson to reiterate the regulatory requirement of submitting a permit application 180 days prior to start-up of their new mechanical wastewater treatment plant.

- The City currently has an NPDES-permitted lagoon system and is upgrading to a mechanical wastewater treatment plant to correct its failure to meet effluent limits.

- On May 23, 2017, the OWP Wastewater Unit sent the City a letter requesting submittal of a new application for a permit to cover discharges from the City's new mechanical treatment plant, which is required by regulation to be submitted 180 days prior to discharge. The 2017 letter requested the permit application by September 31, 2017. No response or application has been received.
- Although Polson is not yet operating its mechanical treatment plant, the letter requests information on a startup date and final construction schedule. The letter also requests the permit application be submitted within 30 days and reminds the City failing to submit a timely permit application may be subject to enforcement.
- Polson is located on the Flathead Reservation, and The EPA directly implements the NPDES program in Indian country.
- Technical Contact: Ken Champagne, (406) 457-5025; Management Contact: Stephanie DeJong, 312-6362

NPDES Enforcement plans to send a letter to the Mandan, Hidatsa, and Arikara (MHA) Nation Chairman proposing the Tribe enter into an Administrative Order on Consent for the Lakeview Aggregates facility

Key Message: NPDES Enforcement is sending a letter to Chairman Mark Fox of the MHA Nation proposing the Tribe enter into an administrative order on consent (AOC) for a tribally-owned sand and gravel operation called Lakeview Aggregates.

- NPDES Enforcement inspected the facility on August 24, 2017, and observed a disturbed surface sloping toward and extending to the edge of Lake Sakakawea. The facility had not sought or received coverage under the EPA's industrial stormwater general permit and had no visible controls for managing pollutants in stormwater at the facility.
- After several attempts to contact the facility and send the inspection report, a tribal interest letter was sent to MHA Nation on May 29, 2018. On August 2, 2018, the NPDES Enforcement Unit had a conference call with the Four Bears' Segment Councilman Frank Grady and his Chief of Staff, Ramona Pond. Councilman Grady indicated the facility was tribally-owned.
- ECEJ held a consultation call with Chairman Mark Fox on August 29, 2018 in which Chairman Fox indicated he was unsure if the facility was tribally-owned. In a follow-up call on October 23, 2018, Chairman Fox indicated he did not believe it was tribally-owned. However, an MHA Nation's Tribal Council Resolution dated September 2, 2015 approves the lease of the sand and gravel operation and includes information indicating the facility is tribally-owned.
- Alleged violations include discharge without a permit. Extensive compliance assistance has been provided to the Tribe and the on-site representative, but this assistance has not resulted in compliance.
- NPDES Enforcement plans to send a letter indicating the EPA believes the facility is tribally-owned and propose the tribe enter into an administrative order on consent to bring Lakeview Aggregates back into compliance.
- The EPA directly implements the NPDES program in Indian country.
- Technical Contact: Emilio Llamozas, 312-6407; Management Contact: Stephanie DeJong, 312-6362

NPDES Enforcement Plans to Send Warning Letter to the St. Ignatius Southside Wastewater Lagoon on the Flathead Reservation for Significant Noncompliance (SNC)

Key Message: National Pollutant Discharge Elimination System (NPDES) Enforcement plans to send a warning letter to Ignatius Southside Wastewater Lagoon to notify them that the EPA's data indicates the facility is exceeding its permitted effluent limits, and some exceedances are considered SNC.

- The limits that have been exceeded include biochemical oxygen demand, ammonia, and e. coli. although not all limits have been exceeded during each discharge event.

- The facility is tribally-owned, and Chairman Ron Trahan will receive a copy of the warning letter.
- The warning letter notifies the facility that these are considered potential violations, and if the EPA makes a final determination that a violation has occurred, the EPA is authorized commence enforcement.
- NPDES Enforcement is evaluating formal and informal enforcement options to bring the facility back into compliance.
- The EPA directly implements the NPDES program in Indian country.
- Technical Contact: Mike Boeglin, 312-6250; Management Contact: Stephanie DeJong, 312-6362

Region 8 prepares to invoke dispute resolution with the Army for response costs owed by the Army to EPA at the Rocky Mountain Arsenal Superfund Site

Key Message: Region 8 is preparing to send a letter to the Army requesting \$1,486,653.45 in payment of EPA's oversight costs estimated for fiscal year 2019 at the Rocky Mountain Arsenal Superfund Site (RMA). In the same letter Region 8 is also notifying the Army of its intent to invoke dispute resolution regarding costs, in the amount of \$3,322,397.19, that were not paid for the years 2015-2018 if the parties cannot resolve this issue informally in early January.

- The Settlement Agreement requires that the parties (EPA, Army, and Shell) meet every three years to attempt to reach consensus on the annual amount to be paid to EPA for the following three years.
- If the parties cannot reach consensus on the amount to be paid, the Settlement Agreement provides that a default amount shall be paid.
- On August 21, 2018 Region 8 sent a letter to the Army requesting \$3,322,397.19 for unpaid costs for the years 2015-2018. The Army paid a percentage (less than half) of what EPA requested.
- The letter requested a response within 30 days and stated that absent such a response, EPA intended to elevate the matter for dispute resolution. To date, EPA has not received a response to this letter.
- Dispute Resolution Process: Before *formal* dispute resolution is invoked, the parties are required by the Settlement Agreement to make a good faith attempt at resolving the dispute informally. The formal dispute resolution process follows a multi-step process through the RMA Council and the Steering and Policy Committee (SAPC). If the dispute is not resolved at the SAPC level, the dispute may be elevated to the Final Review Committee (FRC). Region 8's representative on the FRC is the Administrator of EPA. If the FRC cannot reach agreement, then the decision of the Administrator of EPA serves as the final resolution of the dispute.
- Legal Contacts: Andy Lensink, 312-6908; Will Lindsey, 312-6282; Technical Contact: Matt Hogue, 312-6591; Financial Contact: Ben D'Innocenzo, 312-6342

OFFICE OF PARTNERSHIPS AND REGULATORY ASSISTANCE

HOT ISSUES AND IMPORTANT DEADLINES:

Deliberative Process / Ex. 5

grants performance issues have been identified by the Tribal Assistance

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

- Final reports for EPA grants are due by December 31, 2018. Those reports should be submitted on time and comply with the requirements outlined in 2 CFR 200.328 Monitoring and Reporting Program Performance as well as the award notice.
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Deliberative Process / Ex. 5

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- Contacts: Callie Videtich 312-6434; Jason Deardorff, 312-6583

Deliberative Process / Ex. 5 Grants Performance Issues have been Identified by the Tribal

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- Contacts: Callie Videtich, 312-6434; Donna Kraidy, 312-6818

OFFICE OF TECHNICAL AND MANAGEMENT SERVICES

No report

OFFICE OF WATER PROTECTION

HOT ISSUES AND IMPORTANT DEADLINES:

EPA Region 8 Drinking Water Program Discussed Corrosion Control Treatment Variance with Denver Water and Colorado Department of Public Health and Environment (CDPHE) on November 27, 2018

Key Message: The Region 8 Drinking Water Program met with Denver Water, its consultant and the CDPHE to continue discussions around the possibility of a Safe Drinking Water Act treatment technique variance in place of the CDPHE-designated optimal corrosion control treatment (OCCT) of orthophosphate under the Lead and Copper Rule.

- The technical components of a variance proposal from Denver Water were discussed. Region 8 continued to emphasize the need for the proposal to demonstrate an approach as effective as the designated OCCT of orthophosphate.
- Additional details of a point-of-use filter program to achieve equivalence to OCCT were also discussed.
- The next meeting is scheduled for December 18 to discuss in greater detail Denver Water's proposal parameters (to be shared a week ahead of the meeting).
- Denver Water did not provide an anticipated date for submitting a final proposal.
- CDPHE also held a stakeholders' meeting on November 28, where Denver Water, CDPHE, and others shared status updates regarding the ongoing work to test corrosion control treatment, develop a variance proposal, and estimate the impacts of orthophosphate across the watershed.
- Contacts: Angelique Diaz, 312-6344; Sarah Bahrman, 312-6243

Montana Nutrient Variance Litigation

Key Message: The EPA's reply in the Montana nutrient water quality standards variance litigation *Upper Missouri Waterkeeper v. EPA* (U.S. District Court of the District of Montana) is due to the court on November 30, 2018. The brief has been reviewed by Region 8's Office of Regional Counsel (ORC) and the Office of Water Protection (OWP) staff and management, and the Office of Water and the Office of General Counsel (OGC) staff and management and will be cleared by the OGC front office prior to submittal by the Department of Justice.

- The intervenor defendants' reply briefs are also due on November 30.
- The briefing in the matter will then be completed and oral argument is scheduled for December 12, 2018, in Great Falls, MT. Region 8 ORC plans to attend the oral argument.
- Contacts: Erin Perkins, 303-312-6922, Tina Laidlaw, 406-457-5016

Status of Backlogged Mann Oil Underground Injection Control (UIC) Permit Application

Key Message: The EPA is waiting on additional data from Mann Oil before issuing a draft Class II permit and plans to initiate the permit denial process if the remaining data is not submitted by December 21.

- In the EPA's second notice of technical deficiency Mann Oil was given until November 19 to provide the required information.
- On November 15, the company provided the EPA some, but not all, the remaining data listed in EPA's notice and requested additional time.
- The EPA's final notice gives the company an additional 30 days (i.e. December 21) to provide this information.
- If the company does not meet this additional deadline, the UIC Unit will request that the Regional Administrator's office make verbal notification to the company of the Agency's intention to initiate the permit denial process.
- Contact: Douglas Minter, 312-6079

Region 8 staff met with Wyoming Department of Environmental Quality (WDEQ) on the (National Pollutant Discharge Elimination System) NPDES Permit for Aethon O&G operation

Key Message: On November 27, the Wastewater Unit staff met with the Wyoming Pollutant Discharge Elimination System (WYPDES) program as part of ongoing efforts to resolve EPA concerns with this high-priority permit. During the meeting issues were resolved around the compliance schedule for the concentration limit for chloride and the analysis of several pollutants for effluent limits. The state's application of its antidegradation standard and the resulting chloride load to the receiving stream remains a concern.

- The Wyoming Department of Environmental Quality (DEQ) in this case is not applying its antidegradation policy previously reviewed and approved by the Agency as part of the state's water quality standards setting, but rather is using a new antidegradation policy which EPA has never reviewed.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- The state had also proposed a draft concentration limit for chloride, and a use attainability analysis (UAA) to develop the alternative, higher, chloride standard. This UAA was originally derived in a fashion that was not fully supported by data, and after hearing EPA's concerns, the WDEQ withdrew it. The WDEQ is pursuing an alternate approach to the UAA. It was reported in the media that EPA objected to the UAA, which was not correct.
- WDEQ conveyed that Aethon is very concerned about the chloride limits (load and concentration) as they do not want to provide additional treatment to meet the limit. WDEQ has also reported that Aethon is opposed to the compliance schedule for the concentration-based chloride limit.
- Aethon is trying to arrange a joint meeting with the EPA and the WDEQ on the chloride limits as well as the UAA. The meeting is tentatively scheduled for December 19 in Denver.
- Contacts: Colleen Rathbone, 312-6133; Qian Zhang, 312-6267; Tonya Fish, 312-6832

Region 8 requesting concurrence from Office of Water (OW) on transfer of the National Pollutant Discharge Elimination System (NPDES) program from the North Dakota Department of Health to the new Department of Environmental Quality

Key Message: The State of North Dakota is seeking to transfer its National Pollutant Discharge Elimination System (NPDES) program to the newly-created Department of Environmental Quality

(DEQ). Pursuant to Delegation 2-34, the Region must obtain concurrence from the Office of Enforcement and Compliance Assurance (OECA) and the Office of Water (OW) prior to making a final decision on this revision. The OECA has concurred on this action. No later than December 4, Region 8 will send a memo to David Ross, OW, requesting concurrence on this program transfer by December 7.

- Region 8 has reviewed the State's proposed NPDES program revision package and provided feedback to the State to ensure the requirements of 40 C.F.R. part 123 and the Clean Water Act are met.
- The transfer of the NPDES program was published in the Federal Register and major North Dakota newspapers for 30 days, to provide the opportunity to comment to the public. Public comment ends November 29, and no comments have been received to date.
- If no comments are received, and once the OW concurrence is received, the Regional Administrator may finalize this action with an anticipated effective date of March 15, 2019.
- In addition to ongoing staff-level communications, OW was notified November 28 that the concurrence request would be forthcoming.
- Contacts: Colleen Rathbone, 312-6133

Region 8 decision regarding Town of Pinedale, WY public water system failure to meet filtration avoidance criteria

Deliberative Process / Ex. 5

- There are no current public health concerns, the town continues to effectively operate two disinfection barriers and all finished water total coliform and E. coli samples have been non-detect.
- Contact: Jake Crosby, 312-6389; Angelique Diaz, 312-6344

Annual Review of Colorado Temporary Modifications

Key Message: The Region is supporting adoption of the water quality standards (WQS) changes proposed by the Colorado Department of Health and Environment (CDPHE) (deletion of several temporary modifications); for the temporary modifications that would be retained, the state staff did a great job compiling information about progress that has been achieved.

- Temporary modifications are adopted where there is a need to resolve significant uncertainties about what WQS is appropriate.
- Colorado is now conducting a review of all temporary modifications that expire within the next 2 years.
- In letters from R8 to the Water Quality Control Commission (WQCC) on 10/17/2018 and 11/19/18, the Region supported adoption of the Water Quality Control Division (WQCD) proposal and identified several topics where improvements to the temporary modification program should be considered.
- Several parties including Denver Water submitted comments regarding the molybdenum temporary modification assigned to Tenmile Creek (where the Climax Mine discharges). However, no party has submitted a specific proposal to revise that temporary modification and we expect that it will be retained.
- Region 8's Water Quality Unit staff will attend the December 10, 2018, hearing before the WQCC, briefly summarize the written comments that were submitted and be available to answer any questions about these comments.
- Contacts: Dave Moon, 312-6833; Sandra Spence, 312-6947

Comment Period for Utah Division of Water Quality (UDEQ) 2018/2020 303(d) Assessment Methods

Key Message: Region 8's Water Quality Unit plans to review and provide written comments to Utah Division of Water Quality (DWQ) regarding their 2018/2020 303(d) assessment methods.

- States are required under Section 303(d) of the Clean Water Act (CWA) to submit a list of impaired and threatened waters (303(d) list) every April 1 of even years as a part of their Integrated Report (IR). The EPA has a mandatory duty to review and act upon the 303(d) list submitted by states.
- To identify impaired waters, states develop data assessment methods for evaluating and interpreting water quality data. The UDEQ has released their 2018/2020 assessment methods requesting public comment by December 7, 2018.
- Adequate assessment methods are key to the development of defensible 303(d) lists. Though the EPA does not approve assessment methods, it is common to provide input and comment to help ensure the approvability of 303(d) list submissions upon which they are based.
- The Water Quality Unit is currently reviewing the draft assessment methods and will be preparing a comment letter for submission by the December 7 due date.
- Contact: Sandra Spence, 312-6947

Final Agency Review National Call for Concurrence on EPA's Proposed Recreational Ambient Water Quality Criteria and Swimming Advisory values for Two Cyanotoxins Scheduled for December 6, 2018

Key Message: Region 8 will participate in a national call on December 6, 2018, to provide our concurrence decision on the Agency's proposed national recreational ambient water quality criteria and swimming advisory values for two cyanotoxins. R8's OWP recommends concurrence with minor comments.

- The Agency has been developing proposed criteria/swimming advisory values for cyanotoxins in recreational waters and Region 8 participated actively in this workgroup.
- In developing the proposal, the EPA worked with the Association of Clean Water Administrators (ACWA) to develop values for states to use as either CWA Section 304(a) recreational criteria or as swimming advisories. The use of a flexible construct (ambient water quality criteria and/or swimming advisories) supports different approaches states may take to protect public health and prevent recreator exposure to **harmful algal blooms**.
- In December 2016, the EPA released the draft recreational criteria for public comment. The EPA has revised the criteria and the document in response to public comment.

- The EPA Headquarters has initiated the Final Agency Review process and is requesting Regional concurrence on December 6.
- The OWP has reviewed the final proposal and is recommending concurrence with minor comments intended to help clarify the duration and frequency section of the document and highlight areas where states have flexibility in how they implement the criteria.
- Contact: Tina Laidlaw, 406-457-5016